

Defendant.

AMENDED COMPLAINT
(Jury Trial Demanded)

PARTIES

1. John Henry Campbell and Donna Suzette Campbell (“Plaintiffs”) are residents of Cabarrus County, North Carolina.
2. Plaintiffs reside at 5835 Flowes Store Road, Concord, North Carolina.
3. Defendant CitiMortgage, Inc. is a New York corporation authorized to do business in North Carolina.
4. Plaintiffs are informed and believe that CitiMortgage Inc. is a mortgage servicer with its principal office at 1000 Technology Drive, O’Fallon, MO 63368 and that CitiFinancial Mortgage Company Inc. merged with and into CitiMortgage Inc. effective July 1, 2006.

FACTUAL BACKGROUND

5. Over the last three years or more, the United States has been in a foreclosure crisis.
6. Increased foreclosures have a detrimental effect not just on the borrowers who lose their homes but also on the surrounding neighborhoods that suffer decreased property values and the local governments that lose tax revenue.
7. Congress passed the Emergency Economic Stabilization Act of 2008 on October 3, 2008 and amended it with the American Recovery and Reinvestment Act of 2009 on February 17, 2009 (together, the “Act”). 12 U.S.C.A. § 5201 et. seq. (2009).
8. The purpose of the Act is to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority is used in a manner that “protects home values, college funds, retirement accounts, and life savings” and “preserves homeownership.” 12 U.S.C.A. § 5201.
9. The Act grants the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. § 5211. Under TARP, the Secretary may purchase or make commitments to purchase troubled assets from financial institutions. *Id.*
10. In exercising its authority to administer TARP, the Secretary “shall” take into consideration the “need to help families keep their homes and to stabilize communities.” 12 U.S.C. § 5213(3).
11. Congress allocated up to \$700 billion to the United States Department of the Treasury for TARP. 12 U.S.C. § 5225.
12. Since 2008, Citigroup, parent corporation of Defendant, has accepted \$45 Billion in

TARP funds.

13. On February 18, 2009, pursuant to their authority under the Act, the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the “Making Home Affordable” program.

14. Financial institutions that took TARP money, such as Citigroup, must participate in the program.

15. The program includes a loan modification sub-program called the “Home Affordable Modification Program,” or “HAMP.”

16. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least \$75 billion to HAMP, of which at least \$50 billion is TARP money.

17. Under HAMP, the federal government incentivizes participating mortgage loan servicers to enter into agreements with struggling homeowners to make adjustments to their existing mortgage obligations in order to make their monthly payments more affordable. Servicers are compensated by the federal government for each HAMP modification.

18. Participating servicers, including Defendant, enter into a Servicer Participation Agreement (“SPA”) with the federal government.

19. On or about September 27, 2010, Defendant executed an “Amended and Restated Commitment to Purchase Financial Instrument and Servicer Participation Agreement,” making it a participating servicer in HAMP. A copy of this SPA is incorporated herein and attached as

Exhibit 1 (herein the “SPA”).

20. At all times pertinent to this action, the SPA was in effect.

21. Pursuant to the SPA, Defendant was entitled to a maximum aggregate payment of \$2,291,750,000.00 by Fannie Mae, as financial agent of the United States, for its participation in HAMP.

22. The SPA imposes certain duties on Defendant to help struggling homeowners, including performing all services set forth in the Program Documentation for the Home Affordable Modification Program under the Emergency Stabilization Act of 2008.

23. Performing loan modification services in compliance with the Program Documentation and the “Supplemental Directives” they include is deemed the “industry standard.” 15 U.S.C. 1639A(c).

24. Treasury Supplemental Directive 10-02, which became effective June 1, 2010, prohibits servicers participating in HAMP from conducting a foreclosure sale unless a borrower has been reviewed for HAMP and deemed ineligible for the program. A copy of this Supplemental Directive is attached as Exhibit 10.

25. Supplemental Directive 10-02 provides that participating servicers in HAMP are prohibited from referring a loan to foreclosure or conducting a scheduled sale while borrowers are being reviewed for HAMP and when they are in a trial period plan.

26. Supplemental Directive 10-02 was in effect at the time of Plaintiffs’ application for HAMP loan modification.

27. The request for HAMP consideration was received by Defendant no later than midnight of the seventh business day prior to the foreclosure sale date.

28. Supplemental Directive 10-02 requires the servicer to suspend the foreclosure sale as necessary to evaluate a borrower's request for HAMP consideration.

29. Defendant failed to suspend the foreclosure sale in order to evaluate Plaintiffs' request for HAMP consideration.

30. Supplemental Directive 10-02 requires the servicer to send a "simultaneous trial period plan and foreclosure explanation," which "explains, in clear language, the concurrent modification and foreclosure processes and that states that even though certain foreclosure activities may continue, the home will not be sold at foreclosure sale while the borrower is being considered for HAMP..."

31. Defendant did not send a notice explaining that Plaintiffs' home would not be sold at foreclosure sale.

32. Supplemental Directive 10-02 requires the servicer to develop and implement written policies and procedures to notify the foreclosure attorney/trustee to ensure that the foreclosure attorney/trustee adheres to all of the requirements of Supplemental Directive 10-02 with respect to referring a loan to foreclosure, stay of foreclosure actions, and suspension of foreclosure sales.

33. Upon information and belief, Defendant has not developed or implemented written policies and procedures to notify the foreclosure attorney/trustee to ensure that the foreclosure attorney/trustee adheres to all of the requirements of Supplemental Directive 10-02 with respect to referring a loan to foreclosure, stay of foreclosure actions, and suspension of foreclosure sales.

34. Defendant failed to notify the foreclosure attorney/trustee in accordance with Supplemental Directive 10-02, causing the foreclosure sale to be completed.

PLAINTIFFS JOHN AND DONNA CAMPBELL

35. In 1976, Plaintiff John Henry Campbell purchased the home at 5835 Flowes Store Road, Concord, North Carolina from his aunt and uncle. It had been in the Campbell family since 1950.

36. In 1998, Plaintiff John Henry Campbell's first wife died of cancer.

37. In 1997, Plaintiff John Henry Campbell obtained a mortgage loan in order to pay his wife's medical bills.

38. Plaintiff John Henry Campbell refinanced the mortgage loan several times.

39. Plaintiffs obtained the last refinance mortgage loan on May 25, 2005, secured by a deed of trust for the benefit of MortgageStar, Inc (the "Deed of Trust"). Said Deed of Trust was recorded in Book 6002, Page 1, Cabarrus County Registry, and said deed of trust purports to be a first lien against the title on Plaintiffs' home.

40. At all times relevant hereto, Defendant was the mortgage servicer of this 2005 mortgage loan.

41. On February 16, 2011, Defendant purported to appoint Grady I. Ingle or Elizabeth B. Ells as substitute trustee. Said appointment of substitute trustee was recorded February 17, 2011 in Book 09483, Page 7, Cabarrus County Registry.

42. On or about February 25, 2011, Defendant caused a foreclosure proceeding on Plaintiffs' home to be commenced. A copy of the notice of foreclosure hearing and sale is attached as Exhibit 2.

43. Plaintiffs received a notice from Defendant dated March 23, 2011 offering the chance to apply for a "Citi Modification Program." A copy of the March 23, 2011 notice is attached as

Exhibit 3.

44. The March 23, 2011 notice stated that if Plaintiffs submitted certain financial information for review by April 6, 2011, Plaintiffs would be considered for a mortgage loan modification.

45. Plaintiffs complied with the documentation request and submitted their paperwork prior to April 6, 2011.

46. The March 23, 2011 notice also contained a “Model Simultaneous Trial Plan — Foreclosure Process Explanation.” This section stated, *inter alia*, that Defendant was “committed to helping [Plaintiffs] retain [their] home,” but “[t]he HAMP evaluation and the process of foreclosure may proceed at the same time. You may receive foreclosure/eviction notices — delivered by mail or in person — or you may see steps being taken to proceed with a foreclosure sale of your home.”

47. Nowhere does the March 23, 2011 notice state that Plaintiffs’ home would be *sold* by foreclosure during the modification review.

48. Plaintiffs received a notice dated April 12, 2011 from Defendant asking for additional financial documentation, and giving a deadline of May 16, 2011 for those documents to be submitted. A copy of the April 12, 2011 notice is attached as Exhibit 4.

49. Plaintiffs received a notice dated June 8, 2011 from Defendant asking for additional financial documentation, to be returned by July 11, 2011. A copy of the June 8, 2011 notice is attached as Exhibit 5.

50. Plaintiffs mailed the requested documentation on June 14, 2011.

51. Each time Defendant requested information for the loan modification, Plaintiffs responded promptly by sending the information to Defendant.

52. A few days prior to June 22, 2011, Defendant requested social security information that Plaintiffs had previously submitted to Defendant. Defendant indicated that this was the last piece of information needed to complete the loan modification review.

53. Plaintiffs submitted the social security information by fax to Defendant several days before June 22, 2011. Plaintiffs used the fax machine at Flowes Store Volunteer Fire Department.

54. Plaintiff Donna Suzette Campbell called Defendant on June 22, 2011 to see if Defendant had received the social security information Plaintiffs had sent via fax.

55. During the phone conversation, Defendant informed Mrs. Campbell that Defendant's foreclosure department had decided to go ahead with the foreclosure despite the fact that Plaintiffs were still in review for the loan modification.

56. During the June 22, 2011 phone call referenced above, Plaintiff Donna Suzette Campbell became upset and asked the loss mitigation representative for Defendant how Defendant could foreclose after Plaintiffs had submitted all requested information for loan modification review. In response, Defendant's loss mitigation representative gave Ms. Campbell the phone number for the law firm handling the foreclosure.

57. On June 22, 2011 Plaintiff Donna Suzette Campbell called the law firm handling the foreclosure and learned that their home had been sold to a "third party bidder." Plaintiff Donna Suzette Campbell was surprised because she had thought the sale date was supposed to be June 23, 2011.

58. The order permitting foreclosure was entered by the Cabarrus County Clerk of Court on May 2, 2011, and the foreclosure sale was initially scheduled to take place on May 23, 2011.

59. Pursuant to the lender's request, the substitute trustee postponed the May 23, 2011 foreclosure sale and rescheduled a new sale for June 22, 2011. A copy of the postponement by the substitute trustee is attached as Exhibit 6.

60. Unbeknownst to Plaintiffs, who believed they were being reviewed for a loan modification, their home was sold at a public foreclosure sale on the Cabarrus County courthouse steps on June 22, 2011.

61. Defendant's wrongful foreclosure amounts to aggravated, unjustified, and intentional conduct and justifies an award of punitive damages to Plaintiffs.

62. Since the foreclosure sale on June 22, 2011, Defendant has continued to send Plaintiffs correspondence related to the foreclosed mortgage loan, including, but not limited to, correspondences dated July 21, 2011 and October 7, 2011 assessing "delinquency expenses," as well as a solicitation dated August 11, 2011 offering help with a pre-foreclosure sale in order to avoid foreclosure. Copies of these correspondences are attached as Exhibit 7, 8, and 9, respectively.

FIRST CLAIM FOR RELIEF
(Negligence and Negligent Misrepresentation)

63. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

64. Defendant owed Plaintiffs a duty of due care in processing Plaintiffs' application for a HAMP loan modification.

65. Defendant supplied Plaintiffs with false information in the form of representations that

Defendant would review Plaintiffs' application for a HAMP loan modification while, at the same time, Defendant went forward with foreclosure and wrongfully sold Plaintiffs' home at a foreclosure sale.

66. Defendant failed to exercise reasonable care or competence in its dealings with Plaintiffs and failed to comply with its duties under the SPA.

67. Plaintiffs were justified in their reliance on Defendant's representations.

68. Defendant's misrepresentations and wrongful foreclosure proximately caused damage to Plaintiffs. Plaintiffs forewent other remedies that might have been pursued to save their home from a foreclosure sale; Plaintiffs lost any equity they had in their home; and Plaintiffs' credit rating has been damaged.

SECOND CLAIM FOR RELIEF
(Conversion)

69. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

70. By causing the wrongful foreclosure, Defendant made an unauthorized assumption and exercise of ownership over property rightfully belonging to Plaintiffs, namely Plaintiffs' home and the proceeds from the sale of Plaintiffs' home.

71. Defendant has made this unauthorized assumption and exercise of ownership over property rightfully belonging to Plaintiffs to the exclusion of Plaintiffs' rights in their property.

72. Defendant has wrongfully converted property and money belonging to Plaintiffs to Defendants' own use.

THIRD CLAIM FOR RELIEF

(Violation of Treasury Supplemental Directive 10-02 and HAMP Servicer Requirements)

(Omitted)

FOURTH CLAIM FOR RELIEF

(Breach of Contract and Intended Third Party Beneficiary Doctrine)

73. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

74. The SPA was intended to directly benefit distressed homeowners.

75. As distressed homeowners, Plaintiffs are intended third party beneficiaries of the SPA agreement between Defendant and the U.S. government.

76. Defendant breached the SPA for reasons previously stated in this complaint as well as failure to “perform the Services required under...the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances.” (See Exhibit B, section 4(a) of the SPA referenced herein as Exhibit 1).

77. Pursuant to the Deed of Trust, Defendant agreed that it would abide by all laws in performing its duties under the Deed of Trust.

78. Defendant breached the terms of the Deed of Trust by wrongfully foreclosing as described in this complaint.

79. Plaintiffs have suffered harm due to Defendant’s breach of contract and breach of the SPA requirements.

FIFTH CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing)

80. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

81. Defendant is obligated by contract and common law to act in good faith and to deal fairly with each borrower.

82. Defendant breached this duty as to Plaintiffs by, *inter alia*:

- a. Referring the loan to foreclosure in violation of HAMP requirements;
- b. Recklessly and intentionally failing, without just cause, to stop the foreclosure sale as required by HAMP requirements;
- c. Recklessly and intentionally failing, without just cause, to notify the foreclosure attorney/trustee of the HAMP application and the requirement to suspend the sale;
- d. Failing to provide adequate customer service as required by HAMP requirements;
- e. Breaching the terms of the Deed of Trust by wrongful foreclosure.

83. Defendant failed to act in good faith and deal fairly with Plaintiffs, and, as a result, Defendant caused injury to Plaintiffs.

SIXTH CLAIM FOR RELIEF

(Violations of the North Carolina Secure and Fair Enforcement Mortgage Licensing Act)

84. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

85. By not dealing fairly or in good faith with Plaintiffs in the course of servicing Plaintiffs' mortgage loan, Defendant has violated N.C. Gen. Stat. § 53-244.111(8).

86. By failing to comply with HAMP requirements and causing a wrongful foreclosure while the HAMP application was under review, Defendant violated N.C. Gen. Stat. § 53-244.111(14).

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment)

87. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

88. Defendant has accepted the benefit of the proceeds from the foreclosure sale of Plaintiffs' home.

89. Defendant led Plaintiffs to believe that Plaintiffs were being reviewed for a loan modification and there would not be a foreclosure sale.

90. Defendant foreclosed and has been unjustly enriched by accepting the proceeds of the wrongful foreclosure sale.

EIGHTH CLAIM FOR RELIEF
(Unfair Trade Practices)

91. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

92. Defendant has violated N.C.G.S. § 75-1.1 by engaging in unfair or deceptive acts which were in commerce or affected commerce, and which caused injury to Plaintiffs as set forth above.

93. By proceeding with foreclosure while Plaintiffs were under loan modification review, Defendant engaged in a "dual track" process which violated the requirements of the SPA and resulted in a wrongful foreclosure.

94. Defendant misrepresented to Plaintiffs that during the loan modification process Plaintiffs would not lose their home by a foreclosure sale.

95. These unfair or deceptive acts directly resulted in injury to Plaintiffs, and Plaintiffs are entitled to recover treble damages pursuant to N.C.G.S. § 75-16 and reasonable attorneys' fees as provided in N.C.G.S. § 75-16.1.

NINTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

96. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

97. Defendant's conduct with regard to Plaintiffs was intentional, reckless, outrageous and caused Plaintiffs extreme emotional distress by:

- a. Employing unconscionable tactics while rendering mortgage services and while collecting on the note;
- b. Enforcing the remedy of foreclosure with knowledge or in reckless disregard of the knowledge that foreclosure would be in violation of Treasury regulations;
- c. Failing to adhere to the requirements of the Unlawful Debt Collections Act;
- d. Failing to stop the foreclosure sale and failing to advise the foreclosing attorney/trustee to suspend the foreclosure pending review of the HAMP application.

98. Defendant's outrageous conduct and intentional infliction of emotional distress substantially damaged Plaintiffs, as the natural consequence of such action was to deceive, harass, oppress, or abuse Plaintiffs in connection with the collection of the mortgage debt.

99. As a result of Defendant's outrageous conduct and wrongful foreclosure, Plaintiffs have been, and continue to be, depressed, stressed, and unable to sleep well. Plaintiffs have sought help from their church.

100. As a result of Defendant's conduct, Plaintiff suffered damages in an amount in excess of \$10,000.00, to be proven at trial.

TENTH CLAIM FOR RELIEF
(Exploitation of Elder Adults)

101. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

102. Plaintiff John Henry Campbell is an elder adult who retired in 2006 and who is not able to provide for services necessary to safeguard his rights and resources and to maintain his physical and mental well-being.

103. Defendant has a business relationship with Plaintiff John Henry Campbell and has knowingly, by deception or intimidation, obtained the home of Plaintiff John Henry Campbell by wrongful foreclosure and thereby has obtained his assets and property in violation of N.C. Gen. Stat. §14-112.3

104. Pursuant to N.C. Gen. Stat. §14-113.6 (b) and (c), Plaintiff John Henry Campbell is entitled to restitution, equitable relief, compensatory and punitive damages, costs of suit, and attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that they have and recover of Defendant the following relief:

1. That the Court enter judgment against Defendant for:
 - a. Negligence and negligent misrepresentation;
 - b. Conversion;
 - c. Breach of Contract;
 - d. Breach of Implied Covenant of Good Faith and Fair Dealing;
 - e. Violations of the North Carolina Secure and Fair Enforcement Mortgage

Licensing Act;

- f. Unjust Enrichment;
- g. Unfair Trade Practices;
- h. Intentional Infliction of Emotional Distress;
- i. Exploitation of Elder Adults.

2. That Plaintiffs have and recover damages for breach of contract and breach of implied covenant of good faith and fair dealing in an amount in excess of \$10,000.00 to be determined at trial for breach of contract under the intended third party beneficiary doctrine;

3. That Plaintiffs have and recover tort damages for negligence in excess of \$10,000.00 to be determined at trial;

4. That Plaintiffs have and recover damages to be determined at trial for conversion of Plaintiffs' personal property;

5. That Plaintiffs have and recover damages for violations of the North Carolina Secure and Fair Enforcement Mortgage Licensing Act;

6. That Plaintiffs have and recover damages in excess of \$10,000.00 for unjust enrichment;

7. That the Court award treble damages pursuant to N.C.G.S. § 75-16, and reasonable attorneys' fees pursuant to N.C.G.S. § 75-16.1, or in the alternative award Plaintiffs punitive damages against Defendant in an amount to be determined by a jury at trial;

8. That Plaintiffs have and recover damages in excess of \$10,000.00 for intentional infliction of emotional distress;

9. That Plaintiffs have and recover damages in excess of \$10,000.00 for exploitation of elder adults;

10. That punitive damages be awarded for Defendant's outrageous conduct;

11. That the Court award Plaintiffs the costs of this action, including attorneys' fees and the fees and costs of experts;

12. That the Court grant Plaintiffs such other and further relief as the Court finds necessary and proper, including relief at equity and law; and

13. That the Court grant a trial by jury on all issues so triable.

This the 24th day of April, 2012.

/s/ James E. Scarbrough
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